



DECISION

of

Sheriff S. Reid

IN THE APPEAL

in the case of

Scott Mackellar per
Jackson Boyd LLP

Appellant

against

Nicola Carlin

Respondent

FTS Case Ref: FTS/HPC/EV/24/1883

Glasgow, 26th March 2025.

Decision

The Upper Tribunal UPHOLDS the Appellant's appeal; QUASHES the decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) dated 3 October 2024; and GRANTS an Order for the eviction of the Respondent, her family, and tenants from the Property at 38 Hill Street, Dunoon PA23 7AT.



Summary

[1] By a decision dated 3 October 2024, the FTS refused the Appellant’s application for an eviction order against the Respondent in terms of Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the Decision”).

[2] In short, while the FTS was satisfied that the Respondent had been in rent arrears for a continuous period in excess of three months, it was not satisfied that it was reasonable, in the circumstances, to grant an eviction order.

[3] The Appellant appeals against the Decision.

[4] The Upper Tribunal concludes that the appeal should be upheld.

The factual background

[5] The Appellant is the landlord, and the Respondent is the tenant, of the Property in terms of a Private Residential Tenancy Agreement. The rent is £675 per month.

[6] Initially, the Respondent paid the full rent but, in July 2023, she contacted the Appellant to advise that there had been a change in her benefits and she sought to negotiate a reduced rent. The Applicant refused to reduce the rent.

[7] Thereafter, the Respondent made reduced monthly payments towards her rent, resulting in a shortfall, more particularly set out in the rent arrears schedule produced with the application.

[8] The Respondent has been in arrears since July 2023.

[9] By Notice to Leave dated 16 February 2024, the Appellant gave notice to the Respondent to leave the Property, relying upon Ground 12 of Schedule 3 to the Private Housing (Tenancies)



(Scotland) Act 2016 (that is, that the Respondent has been in rent arrears for a continuous period of three calendar months).

[10] The Respondent has failed to remove from the Property and has not paid the arrears.

[11] As at the date of commencement of the application, the arrears stood at £1,281.67. They continue to accrue.

[12] The Respondent did not participate in proceedings before the FTS or the Upper Tribunal.

The FTS Decision

[13] The FTS was satisfied that the Respondent was in rent arrears for three consecutive calendar months, in terms of Ground 12(3)(a). Therefore, the only question for the FTS to determine was whether it was reasonable to grant the eviction order.

[14] Having proceeded to hear evidence from the Appellant, the FTS refused the eviction order for the following reasons.

[15] First, the FTS considered the “likely impact” on the Respondent and her children of granting the eviction order. It concluded that (i) the grant of the eviction order would make them “homeless”; (ii) that it “will interfere with the schooling of the children”; (iii) that it “will cause considerable stress and upset to the whole family unit”; and (iv) that whilst the Respondent would likely be treated with some priority for rehousing by the local authority, that did not necessarily mean that re-housing would be quick or straight-forward, and that it could result in the provision of temporary accommodation that is “not entirely suitable” for the family unit.



[16] Second, the FTS considered the “impact” on the Appellant. It concluded that there would be no “meaningful impact” on the Appellant by refusing to grant the eviction order. The shortfall between the contractual rent and the Respondent’s benefit was found to be £125 per month but that, even with that shortfall, the Appellant “continues to make a profit of approximately £400 to £450 per calendar month” from the letting. The rent arrears at the date of commencement of the proceedings were said to be equivalent to “less than two months’ rent”. Even with a further five months’ shortfall, the rent arrears would amount to less than three months’ rent. Therefore, the FTS concluded that the Appellant “is not suffering any real hardship, and continues to make a substantial profit from the tenancy”.

[17] Third, the FTS considered that the Appellant’s “apparent attitude towards eviction” was relevant. The FTS observed that the Appellant had not raised proceedings to recover payment of arrears from the Respondent, nor had he raised proceedings (or, it was said, made “any concerted effort”) to recover payment from the tenant’s guarantor. The Tribunal concluded that this was “reflective of a view by the [Appellant] that he did not want the hassle of pursuing his tenant or her guarantor for payment”. Rather, the FTS observed that it “suited” the Appellant to rely on the Respondent’s non-payment “as a way to remove her” because it would be “easier to re-let the Property to a new tenant” who would pay the full rent”. The FTS concluded that this was not a reasonable basis upon which to proceed. The FTS concluded:

“Proceedings for eviction where there are, in particular, low value arrears accruing gradually should be an action of last resort, reflective of an inability to recover payment by other means. The Applicant has not attempted other means to recover payment, notwithstanding that he has two options to pursue.”



[18] Fourth, the FTS expressly acknowledged that Respondent was contractually obliged to pay a monthly rent of £675; that she had not done so; that she had indicated that she was unable to do so; that she had not responded to attempts to correspond with her; that it was unclear what steps she had taken to obtain debt, housing or legal advice; and that the rent was less than the capped value for housing benefit, which suggested (according to the FTS) that there may be scope for the Respondent, with appropriate advice, to seek additional housing assistance.

[19] Nevertheless, the FTS concluded that the likely negative impact on the Respondent of granting the order “far outweighs” the likely negative impact on the Appellant of refusing it. The Appellant was said to have other remedies available to him to recover the outstanding payments, and to encourage compliance by the Respondent (or, alternatively, her guarantor) with her financial obligations under the tenancy agreement. The FTS stated that the pursuit of those remedies would not result in significant financial harm to the Appellant, who continued to derive substantial financial benefit from this tenancy.

[20] For these reasons, the Tribunal unanimously refused the eviction order.

The Permitted Grounds of Appeal

[21] Thereafter, permission to appeal was granted to the Appellant on the following five grounds:-

- (1) First, it was submitted that the FTS erred in its approach to reasonableness, in respect that no reasonable tribunal could have found that it was not reasonable to grant an order for eviction in circumstances where the tenant (i) has not paid rent



in full in more than a year; (ii) has not responded to correspondence seeking payment of the shortfall in rent and arrears; and (iii) has made no proposals to pay either arrears or full rent due.

- (2) Second, it was submitted that the FTS erred in finding that the Applicant makes a profit of £400-450 per month from letting the property (FTS Decision, paragraph 16).
- (3) Third, it was submitted that the FTS erred in finding that “there is no suggestion that refusing to grant the order will have any meaningful impact [on the Appellant]” (FTS Decision, paragraph 16).
- (4) Fourth, it was submitted that the FTS erred in finding that the grant of an order for eviction would likely affect the Respondent and her children in that it “would make them homeless” and “will interfere with the schooling of those children who are of school age” (FTS Decision, paragraph 15).
- (5) Fifth, it was submitted that the FTS erred in finding it was not reasonable for the Applicant to seek the Respondent’s eviction “because it would be easier to re-let the Property to a new tenant who paid than to recover payment” (FTS Decision, paragraph 18) and that no reasonable tribunal could have found that the only reasonable approach for a landlord is to raise an action for payment before seeking eviction.



Decision of the Upper Tribunal

[22] The Respondent took no part in the appeals proceedings. The Appellant consented to the appeal being determined on the papers.

[23] Having considered the papers, the Upper Tribunal upholds all five grounds of appeal.

[24] By way of explanation, a single statutory ground for eviction (Ground 12) is relied upon by the Appellant. It reads:

“Rent arrears

- (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months...
- (3) The [FTS] may find that the ground named by sub-paragraph (1) applies if—
 - (a) for three or more consecutive months the tenant has been in arrears of rent, and
 - (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.”

[25] In addressing the issue of reasonableness, the Upper Tribunal respectfully concludes that the FTS has fallen into error in multiple respects.

[26] First, there is no basis in the evidence to support the FTS’s finding that the Appellant makes a profit of £400 to £450 per month from letting the Property (FTS Decision, paragraph 16). The recorded evidence available to the FTS on the supposed profitability of the tenancy is paltry, and certainly inadequate to support any such conclusion.

[27] Second, there is no basis in the evidence for the FTS’s finding that the grant of an order for eviction would “likely” make the Respondent and her children “homeless” or “interfere with the schooling” of the Respondent’s children (FTS Decision, paragraph 15). These conclusions are speculative. No evidence to that effect is recorded as having been heard.



[28] Third, the FTS erred in finding that the refusal of an eviction order would have no “meaningful impact” on the Appellant (FTS Decision, paragraph 16). On the evidence, accepted by the FTS, the Appellant had lost around 20% of rental revenue due from the Property. There was no suggestion (still less any evidenced, vouched prospect) that the Respondent intended (or would be able) ever to clear the arrears or to resume full contractual payments, still less within a reasonable period. That is *per se* a meaningful impact.

[29] Fourth, there is no basis in the evidence for the FTS’s findings about the Appellant’s “apparent attitude towards eviction”, such as that he “did not want the hassle of pursuing his tenant or her guarantor for payment” or that it “suited” him to rely on the Respondent’s non-payment “as a way to remove her”. These findings are founded upon speculation, not evidence.

[30] Fifth, the FTS has misdirected itself in law in concluding that eviction (even for supposed “low value arrears”) should be “an action of last resort” or that “other means” of recovering payment should first be exhausted. There is no such rule of law. Hypothetically speaking, it is conceivable, perhaps, that proven rent arrears, though sufficient to establish the statutory ground for eviction, may be at such a *de minimis* level as to justify a conclusion that it is not reasonable to grant an eviction order. But this is certainly not such a case.

[31] Sixth, the FTS has fallen into error in its overall assessment of reasonableness, in respect that no reasonable tribunal could properly have concluded, on the evidence available, that it was not reasonable to grant an order for eviction in circumstances where the tenant (i) has not paid full rent in more than a year (*a fortiori* to the objectively-significant extent proven by the Appellant); (ii) has not responded to correspondence seeking payment of the arrears or cessation of the

Upper Tribunal for Scotland



persistent ongoing monthly shortfalls in rent; and (iii) has made no proposals whatsoever to clear the arrears or to resume full contractual payments, still less within a reasonable period.

[32] For the foregoing reasons, the appeal is upheld, the FTS Decision is quashed, and, in terms of section 47(2)(a) of the Tribunals (Scotland) Act 2014, the Upper Tribunal grants an order for the eviction of the Respondent, her family, and tenants from the Property. It is appropriate for the Upper Tribunal exercise its power to re-make the decision, standing the availability of the whole other findings-in-fact of the FTS and the delay to date in affording the Appellant the remedy to which he is incontrovertibly entitled.

Sheriff S. Reid

Member of the Upper Tribunal for Scotland

NOTE:

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state, in terms of section 50(4) of the Tribunals (Scotland) Act 2014, what important point of principle or practice would be raised, or what other compelling reason there is for allowing a further appeal to proceed.